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ABSTRACT

Repeated encroachments by Mormons and Navajos upon Arizona lands traditionally inhabited by the Hopi American Indians occasioned the Executive Order of December 16, 1882 and creation of the Executive Order Reservation. However, assignment of lands was not limited to the Hopi, for the Order stated that the lands should be "set apart for the use and occupancy of the Moqui (Hopi) and such other Indians as the Secretary of the Interior may see fit to settle thereon". Though never officially settling the Navajo on this reservation, the U.S. government did not take action to prevent further encroachment, and the Navajo continued to use these lands for grazing. Section 152, Title 25 of the Code of Federal Regulations gave the Navajo grazing rights on the Navajo reservation, which encompasses Hopi lands, and on all Hopi lands except Land Management District Number Six. Consequently, a joint-use policy has been applied to the lands in question, but such a policy has occasioned conflict between the Hopi and the Navajo. Differences in lifestyle (sedentary vs nomadic) and the Hopi's religious attachment to certain specific land formations have contributed to continued conflict between the tribes, but Public Law 93-531, enacted in 1974, has provided for final settlement of the conflicting rights and interests of the Hopi and Navajo tribes. (JC)

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DEVELOPMENT OF THE HOPI RESERVATION

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In the northeast corner of Arizona, located within the extensive Navaho Reservation, is an area variously referred to as Grazing District 6, the Hopi District, or the Hopi Reservation (Fig. 1). The purpose of this paper is to explain the development of the boundaries of this reservation and to raise the question as to whether the imposition of boundaries to protect one cultural group from another actually does so in an area of cultural conflict.

The 1970 Census reports that 4,380 Hopi reside on the reservation in contrast to 59,850 Navaho on the surrounding Navaho Reservation. Prior to the arrival of the Spanish in 1540, the Hopi lived in seven villages, one of which--Oraibe--was located on the top of what is now called Third Mesa. The other six were located in the basin at the bases of fingers extending out from Black Mesa, the southern extension of the Colorado Plateau. At that time, the Navaho were thought to be located in an area centered on Governador Canyon, west of the Rio Grande near the present New Mexico-Colorado border (Fig. 2). According to Kluckhohn and Leighton, the earliest known hogan site in the Governador region has been dated to be at least as early as 1540.[1]

Following a short period of Spanish control and the Pueblo Revolt of 1680, the Hopi moved their villages to the tops of the mesas as a defensive measure. For the next century, the Spanish made several attempts to conquer and convert the Hopi but were unsuccessful. Therefore, until the Treaty of Gudalupe Hidalgo in 1848, the Hopi were relatively free of any white secular control. However, their relationships with other Indians was a different matter.

After the Navaho acquired the horse, they became raiders; the sedentary pueblo peoples were natural targets for their raids.

J. S. Boyden cites several letters from various Indian agents about the relationship between the Navaho and the Hopi. In one dated August 22, 1856, from Fort Defiance, New Mexico, Agent Kendrick recommended the appointment of an agent for the Hopi because"... the Moquis, from their complete isolation, their timidity and ignorance,... make them the prey of the rapacious wild tribes which entirely surround them...."[2]

Probably, the first official contact the Hopi had with the Anglo-Americans took place in 1850, when a delegation went to Santa Fe to discuss Navaho encroachments with the new government in the Territory of New Mexico. The Hopi were told of Anglo efforts to control the Navaho. Throughout the 1850's and 1860's, the Hopi were visited by various government surveyors and investigators for brief periods of time to obtain information.[3]

Arizona was made a separate territory on February 24, 1863.[4] The following year, just as the Navaho raiding was finally stopped, the Hopi suffered a severe drought; it lasted a sufficient period of time to deplete most of their food stores. Along with the drought, a smallpox epidemic broke out in the Hopi villages and many Indians died. Due to the impossible conditions in their home villages, many of the Hopi left to reside at Zuni. When they returned, they brought back some cultural influences--some knowledge of Spanish, a new style of pottery decoration, and some Zuni ceremonials.[5]

After the Navaho were resettled on their treaty reservation in 1868, the Hopi were promptly inspected by the U. S. Government and an agent was assigned to them in 1869, with agency headquarters at Fort Wingate, New Mexico. In 1871, Special Agent Crothers reported that the villagers

in Oraibe wanted nothing to do with the government; additionally, the relations between Oraibe and the other six villages were not very friendly either. Crothers recommended the removal of the Hopi to Old Fort Wingate because of the poor quality of agricultural land and scarcity of water.[6]

In 1872, Crothers reported that some of the opposition to the government had abated. Meanwhile, the government had turned down his recommendation of the previous year to remove the Hopi, therefore, he suggested the building of schools and an agency among the Hopi because of the remoteness of their villages.[7] Any chance of the Hopi receiving a treaty reservation at this juncture was eliminated when Congress formally abolished the Indian treaty system on March 3, 1871.[8]

The recommendation of Agent Defrees in 1873 to move the Hopi to more suitable land, was followed by a statement of the Commissioner in 1874, to the effect that:

> Efforts have been made to induce them (Hopi) to remove to a reservation on the Chiquita River, where abundant agricultural lands are offered them..., if they could be induced to remove to a country capable of their support they would soon come to be a thriving people.[10]

In 1876, Agent Truax attempted to get the Hopi to agree to move to Indian Territory. The Indians refused to leave their ancestral homes. Truax wrote:

> They have no reservation or title to the country they are now occupying, consequently they are virtually without homes.... The Navajo Indians, immediately on the east, have for some time manifested a disposition to encroach upon their best grazing lands.... On the west and southwest... about four hundred emigrants have settled not far from the lands claimed by this tribe.[11]

He recommended a reservation be established before the Hopi were pushed off their land.[12] Truax did not identify the emigrants further, however, in 1877, Agent Irvine said that they were Mormons.[13]

In 1878, Agent William Mateer strongly recommended the Hopi be moved to a segment of the Little Colorado River, primarily because of the poor natural environment in which they lived, and also because he felt it would be much easier to Americanize them if they came into almost daily contact with white men.[14] On August 14, 1879, the Commissioner clearly showed that he was interested in the establishment of a reservation for the Hopi in order to protect them against the Mormons and the Navaho. He wrote a letter to Mateer, saying:

> With a view of establishing a suitable reservation for the Moquis Indian, and to prevent further encroachments upon the land which they occupy and cultivate, I have to request that you will, at the earliest date practicable, report by letter to this office.[15]

He had twelve specific questions which Mateer was to answer concerning the land occupied by the Hopi: Agricultural potential, land use, resources, grazing, recommended size of the reservation and location, "character and value of the buildings and other improvements belonging to the Indians," capability to become self-supporting, and encroachments of the Navahos.[16] He continued:

> In your annual report dated August 24, 1878, you state that "after a careful survey of the country, you have recommended the removal of the Moquis Pueblo Indians and agency to some point on the Little Colorado River between Meridians 110 and 111 for reasons therein specified." You will designate more definitely by streams, mountains, meridians, and other natural and artificial monuments, the exact location of the lands last above referred to, and give the estimated area. You will also

> report the character of the soil; the amount of agricultural land, whether supplied with timber and water sufficient for the wants of the Indians, and whether the Moquis are willing to remove to the location designated, should it be set aside for them in reservation.[17]

Although there is no written record of Agent Mateer's response, I have found this map of a proposed reservation in the National Archives (Fig. 3), which is signed by Mateer. The map is not very accurate when compared to modern-day maps of the area--the Little Colorado River appears to be misplaced and the parallels seem to be in error. It appears that Mateer's intention was to include territory to the confluence of Moenkopi Wash and the Little Colorado River within the reservation. This was not done when the Executive Order Reservation was established, thereby isolating Moenkopi from the other Hopi towns.

Apparently, no action was ever taken on Mateer's recommendations because the Commissioner dispatched a telegram to Agent Fleming on November 27, 1882, instructing him to "Describe boundaries for reservation that will include Moquis villages and agency, and large enough to meet all needful purposes and no larger." Fleming complied, the boundaries being incorporated into the Executive Order of December 16, 1882. Fleming stated in his letter:

> The boundaries are the most simple that you can be given to comply with the directions of your telegram, and I believe that such a reservation will meet the requirements of this people, without infringing upon the rights of others, at the same time protecting the rights of the Moquis.[19]

The Executive Order read:

> It is hereby ordered that the tract of country in the territory of Arizona, lying and being within the following-described boundaries, Viz: beginning on the one hundred and tenth degree of longitude west from Greenwich, at a point 36° 30' north, thence due west to the one hundred and eleventh degree of longitude west, thence due south to a point of longitude 35° 30' north, thence due east to the one hundred and tenth degree of longitude west, thence due north to place of beginning, and the same withdrawn from settlement and sale, and set apart for the use and occupancy of the Moqui and such other Indians as the Secretary of the Interior may see fit to settle thereon.
> (Italics mine)
>
> (signed) CHESTER A. ARTHUR

The last phrase of this one-sentence executive order would come back to haunt the Hopi in later days.

The drawing of lines on a map, however, did not prevent the Navaho from continuing to encroach on Hopi lands. Agent Bowman's report in 1884 indicated trouble between the two Indian tribes, "... usually caused by the careless herding of the young Navajos, who allow their herds to overrun these outlying Moki (sic) gardens. The Navajos are almost invariably the aggressors." [21]

In his report of 1888, Agent Patterson observed that a considerable number of Navahos had been residing on the Hopi Reservation for a number of years; that they had been making depredations upon the Hopi crops and stock; and that although the feeling between the two tribes was not very friendly, "they get along remarkably well together." He continued:

> The efforts of the agent have been constantly directed towards keeping the Navajos away from the Moquis' farms and watering places; yet when the independent and roving character of the Navajo Indian is considered, it is no easy task for one man to accomplish.

> It would be better if the Navajos could be excluded entirely from the Moquis reserve, but that would be a more difficult problem even than the question of bringing the outside Indians (off reservation Navajos) upon the Reservation.[22]

Thus, the friction continued through the end of the 19th century. Kluckhohn and Leighton considered most of the 1882 Executive Order Reservation to be an addition to the Navaho Reservation during the period 1880 to 1890 (Fig. 4).

For years the Treaty of Guadalupe Hidalgo has been used as the basic argument for Hopi land rights and citizenship. There is nothing in the literature stating specifically that the Hopi had been given either a Spanish or Mexican land grant. I would think that the Hopi would have been excluded by the Spanish because the Royal cedula authorizing the Viceroy to define land grants to the Indians was issued June 4, 1687,[23] at which time the Hopi were not really under Spanish secular administration. American policy toward Indians does not seem to have been affected by the provisions of the Treaty of Guadalupe Hidalgo, or even the Treaty of Louisiana, although both documents infer that Indians were citizens and should be treated as such.

The Hopi land claim approximates the area formerly occupied by the ancestors of the clans which now make up the loosely organized "Hopi-Tribe." This area is roughly bounded by the Colorado-San Juan Rivers to the north, the present Arizona-New Mexico state line to the east, the Zuni and the Mongollon Rim to the south, and the San Francisco peaks to the west (Fig. 5). The Hopi consider it to be an area of shrines, sacred natural features, eagle trapping locations, and regions where salt is obtainable. Occupance is not the important thing in this claim; the relative

importance of this area is as a sacred area. The Hopi priests use it to perform certain rites at the shrines, to trap eagles, and to gather the various minerals and herbs necessary to their ceremonies.[24]

As we have seen, the 1882 Executive Order Reservation was established "for the use and occupancy of the Moqui and such other Indians as the Secretary of the Interior may see fit to settle thereon." This phrase has been variously interpreted at different times, but the overall effect has been to reduce significantly the size of the Hopi Reservation per se. For example, Section 152, Title 25, Code of Federal Regulations, specifies the scope of Navaho grazing:

> The grazing regulations . . . are . . . for the Navajo Reservation, the area described in Executive Order of December 16, 1882 (Hopi), except Land Management District No. 6 . . .(Italics mine)[25]

Those portions of the other land management districts located within the 1882 Reservation have been designated as joint-use land, particularly in the area of mineral rights. The decisions to the allow the use of these lands by both Navaho and Hopi are based, in part, on interpretations of the intent of President Arthur and various Secretaries of the Interior. The position was stated clearly in a letter written on December 16, 1944, by Commissioner John Collier:

> . . . There never was any formal opening of the Hopi Reservation to Navojo settlement. The Navajo Indians simply filtered across the Hopi boundary and were never challenged by the Government.
>
> It is true, as suggested here, that the Executive order did not create an exclusive reservation for the Hopi Indians. The language provided that the land should be "set apart for the use and occupancy of the Moqui (Hopi) and such other Indians as the Secretary of the Interior may see fit to settle thereon." The Secretary never officially settled any other Indians on the area but in the absence of any action to eject the Navajo

> Indians who had filtered into the area it was in time assumed that these Navajo were there with the consent of the Secretary.[26]

This position was legally confirmed in Healing vs. Jones on September 28, 1962.

It seems obvious that the original purpose behind drawing a boundary in 1882--protecting the Hopi from encroachment--failed miserable. Government action and inaction over the years had resulted in the 1882 Hopi Reservation being reduced to an exclusive land area consisting of District 6 only. It appears that at last the controversy is in the process of being solved. Public Law 93-531, "An Act to provide for final settlement of the conflicting rights and interests of the Hopi and Navajo Tribes. . . .", was enacted on December 22, 1974. The major provision of this law directs negotiations to partition the land in the joint-use area. This settlement was a long-time coming. The century of conflict demonstrates the inherent difficulties of tricultural confrontations, particularly when each group has a different perception of land use and division.

Footnotes

1. C. Kluckhohn and D. Leighton, The Navaho (Garden City, N.Y.: Natural History Library, 1962), p. 34.
2. J.S.Boyden, "Petition to the Secretary of the Interior by the Hopi Tribe, Arizona" (undated), p. 4.
3. E.H. Spicer, Cycles of Conquest (Tuscon: University of Arizona Press, 1962), p. 201.
4. E.E.Dale, The Indians of the Southwest (Norman, Oklahoma: University of Oklahoma Press, 1949), p. 55.
5. Spicer, op. cit.
6. Report of the Commissioner of Indian Affairs (RCIA), 1871, pp. 704-705.
7. RCIA, 1872, p. 324.
8. Ibid., p. 83.
9. RCIA, 1873, p. 286.
10. RCIA, 1874, p. 61.
11. RCIA, 1876, pp. 5-6.
12. Ibid., p. 6.
13. RCIA, 1877, p. 160.
14. RCIA, 1878, pp. 8-9.
15. Boyden, op.cit., p. 9-10.
16. Ibid., p. 10.
17. Ibid., p. 11.
18. Ibid., p. 17.
19. Ibid., p. 19.
20. RCIA, 1883, p. 221.
21. RCIA, 1884, p. 137.
22. RCIA, 1888, p. 191.
23. Felix S. Cohen, Federal Indian Law (Wash., D.C.: GPO, 1958) p. 890.
24. C.B. Page, "Hopi Land Patterns", Plateau, 1940, v. 13, p. 29.

Footnotes

25. 25 CFR 152.4

26. Quoted in Appendix to Healing v. Jones as reproduced in "Partition of the Surface rights of Navajo-Hopi Land," Hearing before the Committee on Indian Affairs, U.S. Senate, 93rd Congress, First Session on H.R. 1193 (Wash., D.C.: GPO, 1973), p. 402.

EXPANSION OF THE NAVAHOS

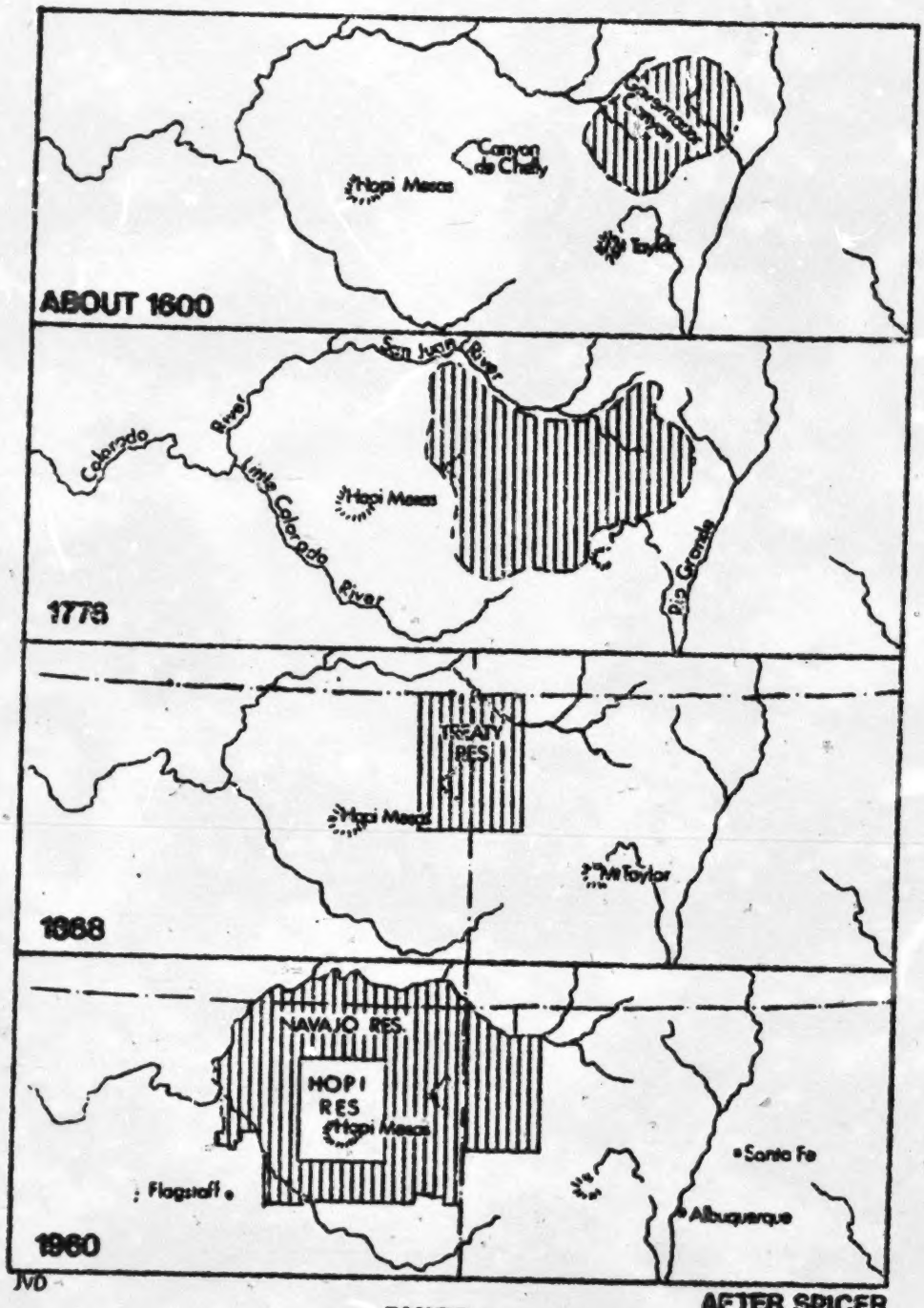
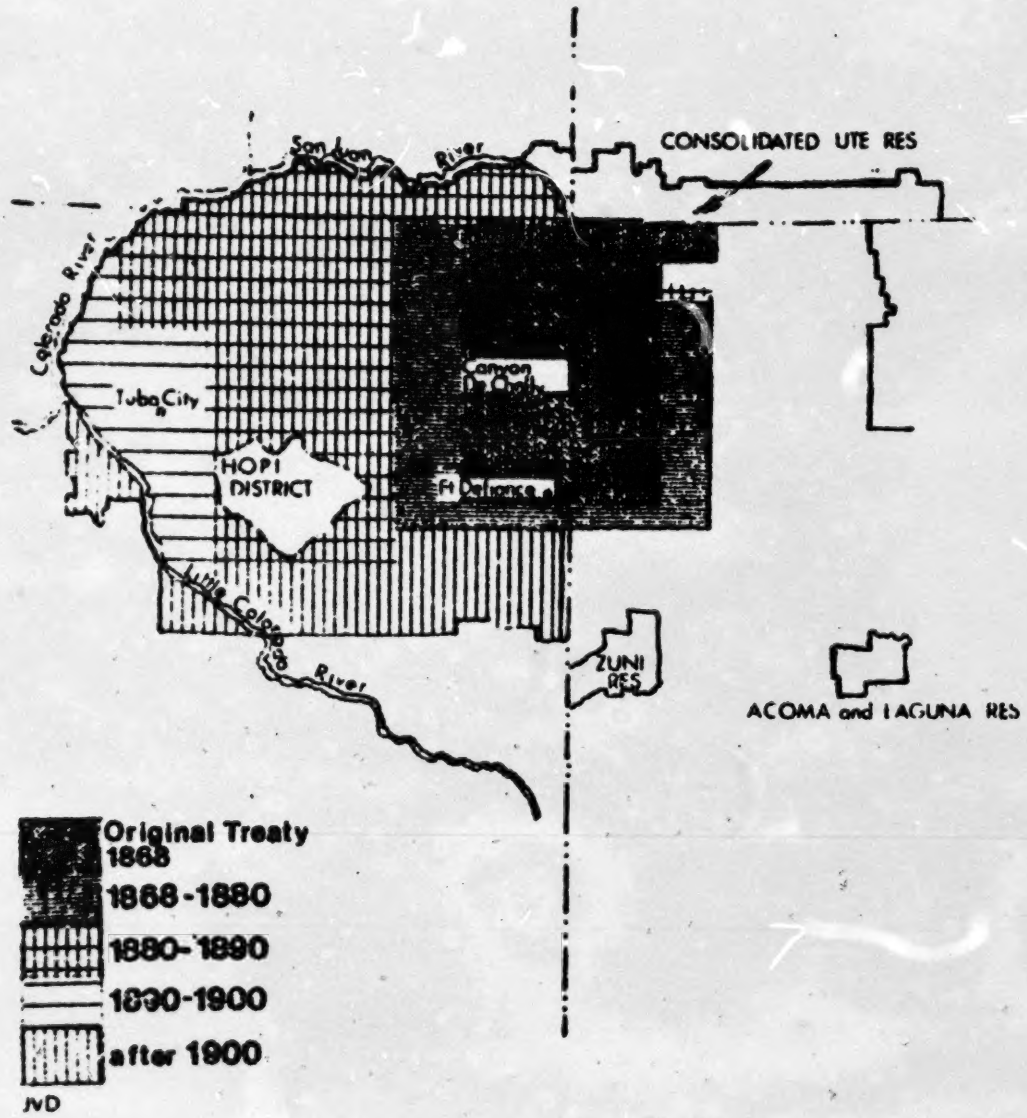


FIGURE 2

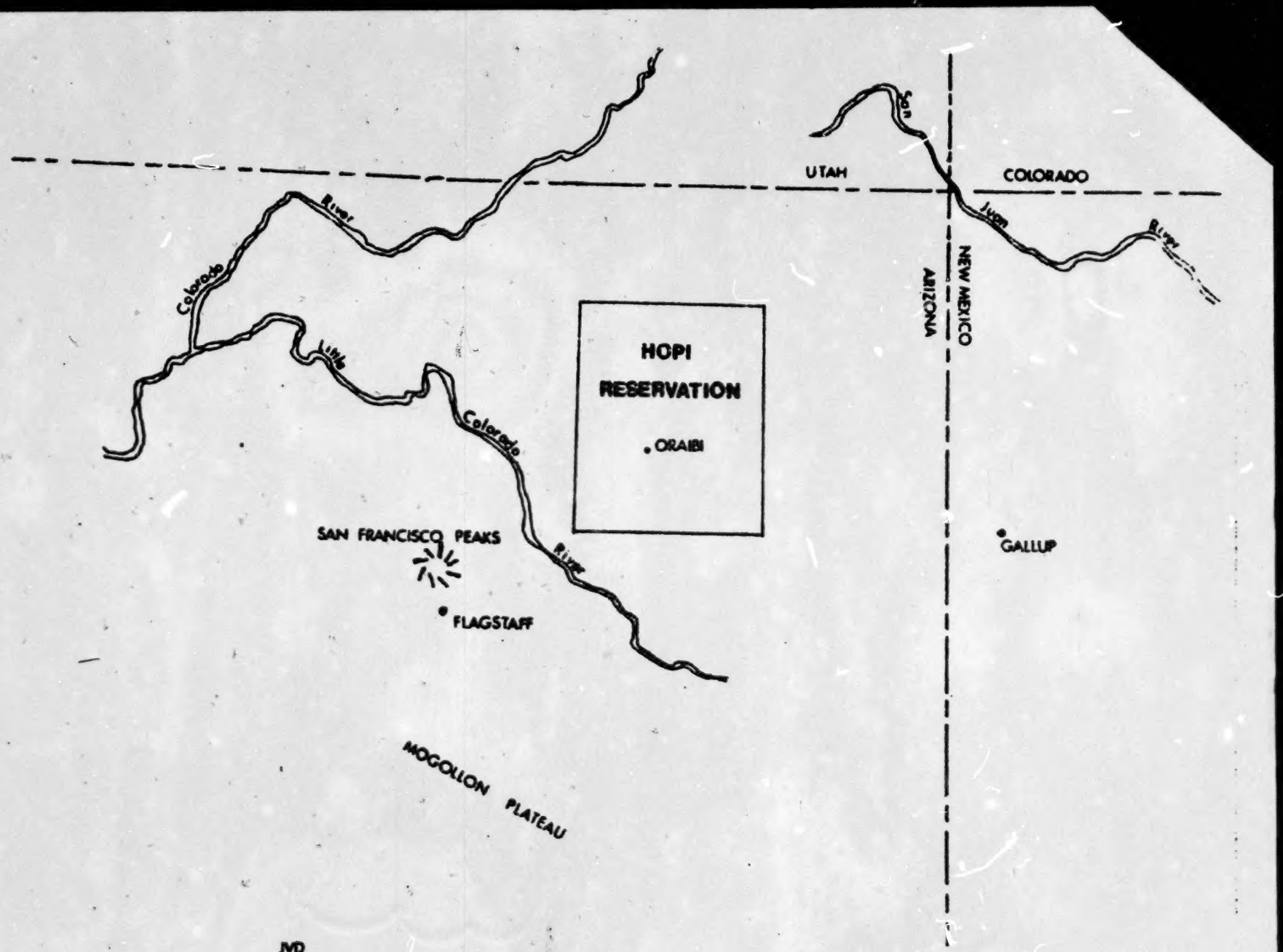
Figures 1 and 3 (maps) deleted because of illegibility

GROWTH OF THE NAVAHO RESERVATION



After Kluckhohn

Figure 4


UTAH
COLORADO
NEW MEXICO
ARIZONA
San Juan River
Colorado River
Little Colorado River
HOPI RESERVATION
ORAIBI
SAN FRANCISCO PEAKS
FLAGSTAFF
GALLUP
MOGOLLON PLATEAU

16

14